

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6050**

**PETITION OF ANDREW SCHWARTZBERG**  
(Hearing held March 16, 2005)

**OPINION OF THE BOARD**  
(Effective date of Opinion, April 15, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(1) and 59-C-1.326(a)(2)(A). The petitioner proposes to construct in the front yard an accessory structure/pool that requires a variance of twenty-five (25) feet as it is within forty (40) feet of the front lot line (Greentree Road) and an accessory structure/spa that requires a variance of thirty-seven (37) feet as it is within twenty-eight (28) feet of the front lot line (Greentree Road). The required front lot line setback is sixty-five (65) feet.

Cynthia Ferranto, an architect, and Andrew Kaupert, a contractor, appeared with the petitioner at the public hearing.

The subject property is Lot 2, Stewart Acres Subdivision, located at 1 Greentree Road, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 01532658).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct in the front yard two accessory structures: a 16 x 40 foot pool and an in-ground spa.
2. The petitioner testified that the property is a corner lot located at the intersection of Greentree Court and Greentree Road. The petitioner testified that the property is unique because the two roads surround the lot on three sides. The petitioner testified that his property has a large, red, maple tree in the southern section of the lot that restricts new construction in this area. The petitioner's lot is approximately 36,700 square feet.

3. Mr. Kaupert testified that based on the determination of the Department of Permitting Services (DPS), the subject property has three front yards and a rear yard. Mr. Kaupert testified that the new structures could not be located elsewhere on the property because construction in other areas of the lot would damage the existing trees or the trees' root systems. Mr. Kaupert testified that the pool and spa could not be moved backwards on the lot because of an existing, detached garage and that the pool and spa would be wedged up against garage.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that while the shape of the petitioner's is distinctive, the property has no exceptional topographical or other conditions peculiar to the lot. The Board further finds that the size of the petitioner's lot significantly exceeds the minimum lot size for the zone. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the existing structures. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of twenty-five (25) feet from the required sixty-five (65) foot front lot line setback for the construction of an accessory structure/pool and of thirty-seven (37) feet from the required sixty-five (65) front lot line setback for the construction of an accessory structure/spa in the front yard are denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of April, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.